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7	IN THE UNITED STATES DISTRICT COURT		
8	FOR THE NORTHERN DISTRICT OF CALIFORNIA		
9	FOR THE NORTHERN DISTR	ICI OF CALIFORNIA	
10	UNITED STATES OF AMERICA,	) No. CD 07 0209 CDD	
11	Plaintiff,	<ul> <li>No. CR 07-0308 CRB</li> <li>DEFENDANT'S SENTENCING</li> <li>MEMORANDUM</li> </ul>	
12	v.		
13	FRANK TOLENTINO,		
14	Defendant.	) _)	
15	INTRODUCTION  Frank Tolentino is 28 years old. One would not have predicted that he would be standing for sentencing in federal court. As a child, he had a reasonably comfortable and stable upbringing in Santa Clara County, where he lives today with his parents and siblings. He received a college education and, in 2002, embarked on a career in entertainment and nightclub promotions. It was this career that proved to be his undoing. Mr. Tolentino has observed that a serious hazard in his career was the prevalence of drugs and alcohol. He admits that he was quickly drawn in. He believes that drug use seriously affected his judgment.  In March 2006, Mr. Tolentino suffered his first, and only, prior conviction—a check fraud case for which he is now serving a period of probation. Although it may have seemed minor at the time,		
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26	it was the first act of a short drama with a dire conclusion.		
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A few months later, in July and August of 2006, Mr. Tolentino mailed 65 grams of methamphetamine to an undercover agent in South Florida. The methamphetamine, was found to be of 30% purity—a clear measure of Mr. Tolentino's lack of sophistication. The drugs were valued at roughly \$4500. The final price of Mr. Tolentino's brief 2006 crime spree is far greater. By statute, he now faces a mandatory minimum five-year term, based on a drug weight above 50 grams. 21 U.S.C. § 841(b)(1)(B). Although individuals in similar circumstances can escape that harsh outcome, Mr. Tolentino is ineligible for so-called "safety valve" sentencing, due to his sole prior—the check fraud conviction.

Consequently, Frank Tolentino asks the Court to impose the smallest sentence permitted by law, sixty months in custody. This request is mirrored by the sentencing recommendation in the PSR and by the plea agreement.

## **DISCUSSION**

## I. Procedural History

This case originated out of the Southern District of Florida. The investigation emanated from that district and it was from there that the arrest warrant was issued. Mr. Tolentino was found in our district (at his home) and hence made his initial appearance here in November, 2006.

After his release, Mr. Tolentino traveled to Florida and the prosecution commenced. In very short order, he decided to resolve the matter and requested assistance in this district in arranging a transfer, pursuant to Rule 20 of the Federal Rules of Criminal Procedure.

In the months while negotiations were pending, Mr. Tolentino successfully submitted to pretrial supervision, including drug testing and counseling. Eventually, terms for the transfer were set. Under the agreement, Mr. Tolentino accepted responsibility for an amount of drugs that triggered the five-year mandatory minimum, though the agreement permitted a safety-valve reduction, if he were deemed eligible. The government agreed to recommend a low-end sentence, in any event.

Prior to sentencing, Mr. Tolentino attempted to secure expungement of his prior conviction, to thereby gain access to a sentence below the statutory minimum. Unfortunately, although the state court ultimately reduced his prior conviction to a misdemeanor, no expungement was granted. Exhibit A, attached.

## II. Reasonableness of Requested Sentence

A sixty-month sentence amply addresses the various statutory goals of sentencing under 18 U.S.C. § 3553. Considering the nature of this case, no greater sentence is needed to satisfy the punitive, protective and deterrence goals. The mandated sentence far outweighs any future danger posed by Mr. Tolentino.

Moreover, full consideration of Mr. Tolentino's history and characteristics, as set forth in the PSR and in the character letters attached, supports the requested sentence. Exhibit B.

Finally, the rehabilitative aims of sentencing are satisfied by Mr. Tolentino's participation in the Bureau of Prisons 500-hour drug treatment program, and by treatment during supervised release.

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**CONCLUSION** 1 2 For all of the foregoing reasons, Frank Tolentino respectfully requests that the Court 3 impose a sentence of sixty months in prison. He also asks that the Court recommend his participation in the Bureau of Prisons 500 hour residential drug treatment program. 4 5 Dated: May 2, 2008 6 7 8 Respectfully submitted, 9 BARRY J. PORTMAN Federal Public Defender 10 /s/11 RONALD C. TYLER Assistant Federal Public Defender 12 13 14 15 16 17 18 19 20 21 22

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